

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 3544/Mum/2016 (Assessment Year 2011-12)

The Stock Exchange Investor’s Protection Fund 25 <sup>th</sup> Floor, Phiroze Jeejeebhoy Towers Dalal Street, Fort Mumbai-400 001. PAN : AAATT3258P	Vs.	CIT(Exemptions) Room No. 617 Piramal Chambers Lalbaug Parel Mumbai-400012.
(Appellant)		(Respondent)

Assessee by	Shri Niraj Sheth & Shri Rajesh Shah
Department by	Shri Manjunatha Swamy
Date of Hearing	17.04.2018
Date of Pronouncement	17.04.2018

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging validity of revision order dated 28-03-2016 passed by Ld CIT (Exemptions), Mumbai u/s 263 of the Act for assessment year 2011-12.

2. We heard the parties and perused the record. The assessee is a trust formed, vide Trust deed dated 10<sup>th</sup> July, 1986. It was formed as per the direction of the Ministry of Finance, Department of Economic Affairs Stock Exchange division of Central Government, vide notification no.F.No.14/4/SE/85 dated 22-08-1985. The assessee was granted registration by Charity Commissioner under Bombay Public Trust Act, 1950. It was also granted registration u/s 12A of the Act by the CIT, vide Registration no.TR.25443 dated 05-12-1986.

3. The assessee has been claiming exemption u/s. 11 of the Act over the years. In between, it claimed exemption u/s. 10(23EA) of the Act for assessment years 2001-02 to 2007-08. Subsequent to the amendment brought

by Finance Act, 2006 w.e.f. 01-04-2007, the exemption u/s 10(23EA) is being claimed only in respect of income derived by way of contribution from recognized stock exchanges and members thereof and the remaining income is being claimed as exempt u/s 11 of the Act.

4. The main object of the Trust is to protect and benefit the members of the public who invest and deal in securities through the members of the Stock exchange, i.e., the trust shall be compensation these members of public in respect of their claims against defaulter members of the Stock exchange in accordance with the provisions specified in the trust and the Rules. The assessee is also having objects to carry on research activities, investor education, preparation and publication of statistical and other information etc.

5. The assessing officer completed the assessment of the year under consideration u/s 143(3) of the Act on 28-02-2014 determining total income at NIL after allowing exemption u/s. 11 of the Act. Consequent to the proposal received from the Joint Commissioner (Exemptions) Range-2, Mumbai, the Ld CIT (Exemptions) issued following show cause notice to the assessee for revising the assessment order passed for AY 2011-12:-

*"The assessment was completed under scrutiny manner accepting the returned 'NIL'<sup>1</sup> income. The assessee was created with specific objective of establishing a Fund for the benefit of the Customers of the members of Bombay Stock Exchange and the nature of the fund was very restrictive. It gave benefits only to those persons who actually did the trade through the exchange's members or the exchange. The trust was dissolvable on dissolution of the Stock Exchange and the proceeds of the assessee was not to be given to any other trust but would be shared with the Stock Exchange. Thus, the nature of the fund is moe of a business facilitator of the Stock Exchange and non-charitable in nature. It has been held judicially that where the primary objective of a trust is non-charitable, the trust would lose exemption even if the ancillary objectives are charitable in nature. The exemption under section 11 was claimed to circumvent the express provisions of the legislation.*

*3. The assessee was having interest and other income of Rs.29,96,69,167/- which has been claimed exempted under section 11 of the Income Tax Act The exemption has apparently been wrongly allowed.*

*4. In view of the above facts, you are requested to explain as to why order u/s.263 of the Act should not be passed enhancing or modifying the assessment or cancelling the assessment in your case being erroneous and prejudicial to revenue. In this regard, you are requested to attend in person or through your Authorised Representative before the undersigned and file the written submissions and argue the matter on 16<sup>th</sup> March 2016 at 2.30 P.M. in my office.”*

6. In response thereto, the assessee gave detailed reply and contended that the order passed by the AO is not erroneous and prejudicial to the interests of the revenue. The Ld CIT (Exemptions) did not accept the contentions of the assessee and accordingly set aside the assessment order and directed the AO to pass fresh assessment order after making enquiries. The assessee is aggrieved by the order so passed by Ld CIT (Exemptions).

7. A perusal of the show cause notice issued by the Ld CIT (Exemptions) would show that the Ld CIT is questioning the objects of the trust and is drawing inference that the activities of the trust is more of a business facilitator of the Stock exchange and hence non-charitable in nature. The Ld CIT has also observed that the upon dissolution of the Trust, the proceeds would be shared with the Stock exchange. We notice that the Ld CIT has taken the view that the assessing officer should have examined these two issues while finalizing the assessment order of the year under consideration.

8. We are unable to understand the rationale of the Ld CIT. The registration u/s 12A of the Act has already been granted to the assessee holding that the assessee as a Charitable trust. At the time of granting registration, the objects of the trust and the genuineness of activities would have been examined by the Ld CIT. Once the registration u/s 12A of the Act has been granted, the role of the assessing officer, who is subordinate to the CIT, is to examine the claim of exemption u/s 11 of the Act made by the assessee. When the Ld CIT has granted registration u/s 12A accepting that the objects of the assessee-trust is charitable in nature, how the assessing officer can be expected to question the decision so taken by Ld CIT, that too, during the course of assessment proceedings.

9. If the Ld CIT is of the view that the objects of the trust are not charitable in nature, then it for him to take appropriate action to cancel the registration so granted by him. We notice that the assessing officer has passed the order granting exemption u/s 11 to the assessee on the strength of the registration granted to the assessee u/s 12A of the Act. In that view of the matter, we are of the view that the assessment order cannot be considered to be erroneous and prejudicial to the interests of revenue.

10. When these aspects were pointed out to Ld CIT (DR), he submitted that the Ld CIT (Exemptions) has followed the procedure to revise the assessment order first and then he may be taking steps to cancel the registration u/s 12A of the Act.

11. The revisional power granted to Ld CIT u/s 263 of the Act enables him to revise the order which are considered by him to be erroneous and prejudicial to the interests of the revenue. As already observed earlier, the assessing officer is not expected to examine the objects of the trust at the time of assessment proceedings and if it is done so, it may amount to review of the order passed by Ld CIT u/s 12A of the Act, which the assessing officer is not empowered to do. Even if the AO takes the view that the objects are not charitable in nature, his role may be to bring the same to the notice of Ld CIT only, who is the authority to take appropriate decision in accordance with the law. We notice that the Ld CIT has not pointed out any violation of sec. 13 of the Act or application of funds contrary to the objects of the trust, which would have disabled the assessee from claiming exemption u/s 11 of the Act. In this view of the matter, we are of the opinion that the impugned assessment order cannot be considered to be erroneous and prejudicial to the interests of revenue on the twin reasons cited by Ld CIT. Accordingly we are of the view that the impugned revision order passed by Ld CIT (Exemptions) is liable to be set aside. Accordingly we set aside the impugned revision order.

12. In the result, the appeal filed by the assessee is allowed.  
Order has been pronounced in the Court on 17.04.2018.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 17/04/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

Senior Private Secretary  
ITAT, Mumbai

PS